

**THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JOHN JEAN

Plaintiff,

NO. 4:20-CV-01722

v.

BUCKNELL UNIVERSITY,
NATIONAL FRATERNITY OF
KAPPA DELTA RHO,
KAPPA DELTA RHO – IOTA
CHAPTER,
WILLIAM C. BABCOCK, DILLON
DUTTERA and NICHOLAS
ZANGHETTI

Defendants

ORDER

AND NOW, this _____ day of _____, 2021, upon consideration of Plaintiff's Motion for Leave to File a Sur-Reply Brief to Defendant Bucknell University's Motion to Dismiss, and any response, it is hereby ORDERED that Plaintiff's Motion is GRANTED.

BY THE COURT:

J.

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Defendants

PLAINTIFF’S MOTION FOR LEAVE TO FILE A SUR-REPLY BRIEF

Plaintiff, John Jean, by and through his counsel, Freiwald Law, P.C., respectfully requests leave of this Honorable Court to file a Sur-Reply Brief in response to Defendant Bucknell University’s Motion to Dismiss Plaintiff’s Complaint. Plaintiff’s proposed Sur-Reply is attached as Exhibit “A.”

Plaintiff’s Sur-Reply brief is necessary as new evidence has been discovered that was not previously available at the time of the Motion and briefing that further weighs in favor of denying Defendant’s Motion to Dismiss. Plaintiff’s Sur-Reply Brief is necessary to advise the court of this new evidence and is limited to providing and explaining this new evidence.

WHEREFORE, Plaintiff respectfully requests leave to file the Sur-Reply
attached at Exhibit “A.”

Respectfully submitted,

By:

A handwritten signature in blue ink, appearing to be 'A. Freiwald', written over a horizontal line.

AARON J. FREIWALD, ESQUIRE
LAURA E. LAUGHLIN, ESQUIRE
Counsel for Plaintiff

Dated: March 2, 2021

**IN THE UNITED STATES DISTRICT COURT
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ZANGHETTI

Defendants

CERTIFICATE OF SERVICE

I, Aaron J. Freiwald, Esquire, hereby certify that a copy of Plaintiff's Motion for Leave to File Sur-Reply Brief was served via the Court's electronic filing upon the following, any party not registered has been served by first class mail:

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AARON J. FREIWALD, ESQUIRE

Dated: March 2, 2021

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**PLAINTIFF JOHN JEAN’S SUR-REPLY BRIEF IN OPPOSITION TO
DEFENDANT BUCKNELL UNIVERSITY’S MOTION TO DISMISS**

A news article from the Bucknellian, Bucknell University’s own college newspaper, came out on February 23, 2021, providing several new details that should be considered by this Honorable Court in its decision regarding Defendant Bucknell University’s Motion to Dismiss Plaintiff’s Complaint and Plaintiff’s Opposition. This new information further weighs in favor of the Court denying Defendant’s Motion.

The article titled, “University chapter of Kappa Delta Rho suspended after alleged hazing” states that “Kappa Delta Rho is the sixth Greek-letter organization to be suspended, either on a temporary or permanent basis, from the University in the past 10 years. Most recently, the Beta-Mu chapter of Tau Kappa Epsilon (TKE)

was suspended in 2019 following evidence that some of its members were “[e]ndur[ing] brutality of a physical nature,” including, “use of dog shock collars on members; throwing darts at members; [and] slapping members.” TKE is currently an “unrecognized organization” according to the University’s website.” See Bucknellian Article published February 23, 2021 at Exhibit “A.”

In weighing the *Althaus*¹ factors, it is clear that Defendant Bucknell has ongoing issues with hazing among its fraternities. Defendant’s argument that hazing was not foreseeable to it fails in the face of the five other Greek-letter organizations that have been suspended from Bucknell over the last ten years. These are five separate Greek organizations *in addition to* Kappa Delta Rho, which has its own history at Bucknell of hazing students.

In addition, the Bucknellian article states that Bucknell’s Interfraternity Council did not publish formal recruitment handbook in 2020 for students and prospective pledges as it did every year prior because, according to the Interfraternity Council President, it did not submit the documentation to Bucknell in time. It begs the question if Bucknell did not put out the recruitment handbook in 2020 as required, why were the fraternities allowed to accept pledges during September 2020? Importantly, the formal recruitment handbook provides information about each fraternity at Bucknell and has previously had a list of

¹ *Althaus ex rel. Althaus v. Cohen*, 756 A.2d 1155 (Pa. 2000).

questions and answers to help inform the students about their decision on whether to pledge a fraternity and the safety in doing so.

According to the article, Defendant Bucknell kicked Kappa Delta Rho Iota Chapter out of the Bucknell-owned and controlled fraternity house on its campus and converted the building to housing for Bucknell students. This raises genuine issues of material fact as to the duty that Bucknell owed to Plaintiff and Bucknell's ability to assert control over the actions in the on-campus fraternity house.

Bucknell cannot have it both ways. Bucknell cannot say that it has no responsibility for or control over what happens at the fraternity house on its campus and then assert control when it is convenient for Bucknell.

For the reasons stated here and in Plaintiff's prior briefing, Defendant Bucknell's Motion to Dismiss should be denied.

Respectfully submitted,

By:

AARON J. FREIWALD, ESQUIRE
LAURA E. LAUGHLIN, ESQUIRE
Counsel for Plaintiff



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University chapter of Kappa Delta Rho suspended after alleged hazing

Nick DeMarchis

(https://bucknellian.net/staff_name/nick-demarchis/),

Opinions Editor

February 24, 2021

News (<https://bucknellian.net/category/news/>)

Last November, the Iota Chapter of Kappa Delta Rho (KDR) fraternity was terminated from the University on grounds of hazing, after having been previously reinstated nine years ago. This suspension comes two months after a federal lawsuit by former student John Jean accused multiple defendants — including the University, the local and national chapters of KDR, and three students — of hazing, negligence, false imprisonment, assault, battery and emotional distress.

Both the University and the National Fraternity of Kappa Delta Rho confirmed the chapter's termination to *The Bucknellian*. University Director of Media Relations Mike Ferlazzo noted that, "the chapter was found responsible for five violations of the Bucknell University Student Code of Conduct, including hazing as defined in the Bucknell



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EXHIBIT A



(<https://bucknellian.net/102930/news/audra-wilson-to-speak-at-class-of-2021-commencement/#photo>)

Audra Wilson to speak at class of 2021 commencement
(<https://bucknellian.net/102930/news/audra-wilson-to-speak-at-class-of-2021-commencement/>)

Audra Wilson '94, president and chief executive officer

conduct, including hazing as defined in the Bucknell Antihazing Policy. Based on the nature of the violation, the University terminated the Chapter's recognition at Bucknell, effective immediately."

As required by the Commonwealth of Pennsylvania, the University's quarterly Timothy J. Piazza Anti Hazing Law Report states that KDR's recognition was terminated on Nov. 15 due to "underage provision / consumption of alcohol" and consumption of an alcoholic liquid in a way "which subjects the student to a risk of emotional or physical harm."

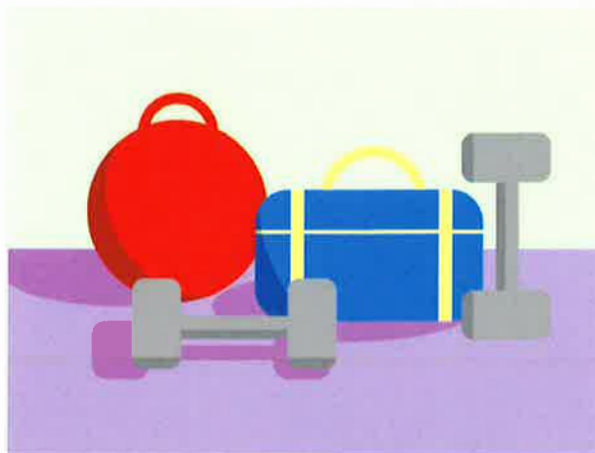
"Upon learning of a range of potential misconduct, we immediately began an investigation and suspended all KDR chapter operations and activities. Following an administrative hearing, including the opportunity for members of the chapter to respond to all allegations of misconduct, the University terminated the Chapter's recognition," Ferlazzo said.

Executive Director of the National Fraternity of KDR Joseph Rosenberg further explained of a review after the University's decision. "Our review was guided by a deep commitment to our values, among which is respect for all persons at all times. It is clear that the conduct of some members of our Iota chapter did not meet this standard," Rosenberg said. "After a thorough and fair review of the facts, including those discovered by university investigators, on Wednesday, January 27 the National Fraternity revoked the charter and recognition of the Iota Chapter."

The Bucknellian reached out to students formerly involved in the fraternity; none spoke on the record for this article.

Kappa Delta Rho is the sixth Greek-letter organization to be suspended, either on a temporary or permanent basis, from the University in the past 10 years. Most recently, the Beta-Mu chapter of Tau Kappa Epsilon (TKE) was suspended in 2019 following evidence that some of its members were "[e]ndur[ing] brutality of a physical nature," including, "use of dog shock collars on members; throwing darts at members; [and] slapping members." TKE is

of the Shriver Center on Poverty Law, will return to Lewisburg this May to speak at the Class of 2021's commencement...



(<https://bucknellian.net/102907/satire/klarc-recruits-fraternity-risk-managers-to-monitor-weight-room-occupancy/#photo>)

KLARC recruits fraternity risk managers to monitor weight room occupancy

(<https://bucknellian.net/102907/satire/klarc-recruits-fraternity-risk-managers-to-monitor-weight-room-occupancy/>)

"Well, at first we had one of the guys from physical therapy monitoring everything, but that wasn't working too well," answers a KLARC administrator on how they've...



(<https://bucknellian.net/102886/features/spotlight-new-faces-of-bsg/#photo>)

Spotlight: New Faces of BSG

(<https://bucknellian.net/102886/feature-new-faces-of-bsg/>)

The Bucknell Student Government (BSG) is a motivated and mindful group of undergraduate students who serve to represent the student body. As the bridge between said student...



Men's water polo splits season opening games against Naval Academy

cards at members, [and] slapping members. KDR is currently an “unrecognized organization” according to the University’s website.


Nor is this the first time that both the University and a fraternity have appeared as defendants in a civil suit. In 1991, then-junior Greg Arrese sued the Phi Gamma Delta (Fiji) fraternity, the University, and 14 other individuals with charges coded as “intentional acts of assault, libel, trade libel or slander.” All charges were dismissed the next year, shortly before Arrese’s graduation.


Even though plaintiff John Jean has left the University — he transferred to Boston University — litigation in *Jean v. Bucknell University* is still ongoing. In the lawsuit, KDR and the student defendants have argued that Jean must settle his claims out of court, citing the pledge agreement that he signed in September. The University has opposed settling out of court, and further argues that the suit be dismissed because “colleges and universities are not liable for the tortious or criminal actions of their students.” The University also contests a claim of Jean’s that Public Safety did not relay his complaint to law enforcement, emphasizing the fact that Public Safety officers are police officers under Pennsylvania law.

Jean’s complaint, filed two months before KDR’s termination, centers around the events of the night of Sept. 10-11, when he was a KDR pledge at the time. The complaint states that he experienced “[f]orced alcohol consumption,” “[p]hysical assault and battery,” and “[h]azing.” It further alleges that outside the KDR fraternity house on Strohecker Farm Lane, he was “punched ... in the face.” The Public Safety Daily Crime & Fire Safety Log for Sept. 11 shows an “[a]ssault” at 1:55 a.m. on the “Trax Hall Lawn.”

Aaron Freiwald, lead counsel for Jean, told *The Bucknellian* that “It’d be strange for a university to say, ‘Come send your students to our school, pay us a lot of money for tuition and housing. But, by the way, if something bad happens to you, we’re not responsible for what happens.’ ... It’s absurd.” Freiwald also added that

(https://bucknellian.net/102901/sports/men-polo/mens-water-polo-splits-season-opening-games-against-naval-academy/)
February 24, 2021

 Record-breaking surge in campus COVID-19 cases brings tighter restrictions
(https://bucknellian.net/102652/news/record-breaking-surge-in-campus-covid-19-cases-brings-tighter-restrictions/)
February 17, 2021

 Shocking! Barron Trump found living in White House vents
(https://bucknellian.net/102635/satire/shocking-barron-trump-found-living-in-white-house-vents/)
February 17, 2021

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he's arguing for the matter to be settled in-court because "you have much fewer rights in [an out-of-court proceeding] than you do in a court proceeding."

Freiwald was also counsel for James Vivenzio, a former Penn State student who sued his university and the national and local chapters of Kappa Delta Rho in 2015, for several similar charges including hazing, battery, fraud and false imprisonment. Vivenzio's complaints were included in a 2017 236-page Centre County grand jury report, detailing hazing by various fraternities at Penn State. The report ultimately led to numerous changes at PSU, as well as the passage of the Timothy J. Piazza Anti Hazing Law, a Pennsylvania state law which mandates specific policies against hazing and quarterly public reporting of all hazing incidents.

The defendants named in the lawsuit either declined or did not return requests for comment on the pending litigation. President of the University's Interfraternity Council (IFC) Jack Coogan '22 did not respond to requests for comment from *The Bucknellian*.

IFC did not release a formal recruitment handbook prior to the fall 2020 rush season, breaking from tradition in previous years. Despite the fact that the Panhellenic Council — the governing body for sororities on campus — released a 20-page guide for fall 2020 recruitment, Ferlazzo explained IFC "did not submit the needed information for the brochure in time" this year. IFC's fall 2019 brochure contained details of rules on recruitment, pledge initiation and hazing.

The house which the fraternity formerly occupied on Strohecker Farm Lane has since been repurposed as general University housing. Rosenberg added that "[a]ll of the remaining [KDR] Brothers were move [sic] to Alumni status."

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